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Attorneys for Plaintiff MATTHEW STROZIER,
on behalf of the general public as private attorney general

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

MATTHEW STROZIER, on behalf of the
general public as private attorney general,

Plaintiffs,

v.

UNITED PARCEL SERVICE, INC., An Ohio
Corporation; and DOES 1-50, inclusive,

Defendants.

Case No.

ASSIGNED FOR ALL PURPOSES TO:

JUDGE:

DEPT:

**PAGA REPRESENTATIVE ACTION
COMPLAINT PURSUANT TO THE
PRIVATE ATTORNEYS GENERAL ACT
(Labor Code §§ 2698 *et seq*).**

COMES NOW Plaintiff MATTHEW STROZIER (“Plaintiff”), on behalf the general public and all non-exempt aggrieved employees, acting on behalf of the California Attorney General as private attorney general, asserts claims against Defendants UNITED PARCEL SERVICE INC., (“UPS”); and DOES 1-50, inclusive (collectively “Defendants”) as follows:

I. INTRODUCTION

1. This is a representative action for recovery of penalties under the Private Attorneys General Act of 2004 (“PAGA”), Cal. Lab. Code sections 2698 *et seq.* PAGA permits “aggrieved employees” to bring a lawsuit as a representative action on behalf of the general public as private attorney general and all other current and former aggrieved employees, to recover civil penalties and address an employer’s violations of the California Labor Code.

2. In this case, Defendants violated various provisions of the California Labor Code. As set forth below, Defendants implemented policies and practices which led to unpaid wages resulting from Defendant’s failure: (a) to pay reporting time wages, (b) failure to provide meal periods for every work period exceeding more than ten (10) hours per day and failure to pay an additional hour’s of pay or accurately pay an additional hour’s of pay in lieu of providing a meal period; (c) failure to provide rest breaks for every four hours or major fraction thereof worked and failure to pay an additional hour’s of pay or accurately pay an additional hour’s of pay in lieu of providing a rest period; (d) failing to pay all wages earned and owed upon separation from Defendant’s employ, (e) failing to provide accurate itemized wage statements; and (f) failure to maintain accurate records.. As a result Plaintiff seeks penalties under Labor Code 2698, *et. seq.* on behalf of the general public as private attorney general and all other aggrieved employees.

II. JURISDICTION AND VENUE

3. The California Superior Court has jurisdiction over this action pursuant to California Constitution Article VI, Section 10, which grants the Superior Court “original jurisdiction in all cases except those given by statute to other trial courts.” The statutes under which this action is brought do not give jurisdiction to any other court.

4. This Court has jurisdiction over Defendants because, upon information and belief,

1 each Defendant either has sufficient minimum contacts in California, or otherwise intentionally
2 avails itself of the California market so as to render the exercise of jurisdiction over it by the
3 California Courts consistent with traditional notions of fair play and substantial justice.

4 5. Venue as to each Defendant is proper in this judicial district pursuant to Code of
5 Civil Procedure section 395. Defendants are doing business throughout California, including but
6 not limited to San Joaquin County, and each Defendant is within the jurisdiction of this Court for
7 service of process purposes. The unlawful acts alleged herein have a direct effect on Plaintiff and
8 all other aggrieved employees within the State of California. Defendants employ numerous
9 aggrieved employees in in the State of California.

10 6. On information and belief, Defendants have conducted business within the State of
11 California during the purported liability period and continue to conduct business throughout the
12 State of California. The unlawful acts alleged herein have had a direct effect on Plaintiff, and the
13 similarly situated non-exempt aggrieved employees within California.

14 7. The California Superior Court also has jurisdiction in this matter because on
15 information and belief there are no federal questions at issue, as the issues herein are based solely
16 on California statutes and law, including the California Labor Code, the IWC Wage Orders, the
17 California Code of Civil Procedure, the California Civil Code, and the California Business and
18 Professions Code.

19 8. On information and belief, during the statutory liability period and continuing to
20 the present ("liability period"), Defendant consistently maintained and enforced against
21 Defendant's Non-Exempt Aggrieved Employees, among others, the following unlawful practices
22 and policies, in violation of California state wage and hour laws: (a) to pay reporting time wages,
23 (b) failure to provide meal periods for every work period exceeding more than ten (10) hours per
24 day and failure to pay an additional hour's of pay or accurately pay an additional hour's of pay in
25 lieu of providing a meal period; (c) failure to provide rest breaks for every four hours or major
26 fraction thereof worked and failure to pay an additional hour's of pay or accurately pay an
27 additional hour's of pay in lieu of providing a rest period; (d) failing to pay all wages earned and
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1 owed upon separation from Defendant's employ, (e) failing to provide accurate itemized wage
2 statements, (f) failure to maintain accurate records.

3 9. On information and belief, during the statutory liability period and continuing to
4 the present, Defendants have had a consistent policy of failing to accurately pay reporting time
5 wages.

6 10. On information and belief, during the statutory liability period and continuing to
7 the present (rest and meal period liability period), Defendants have had a consistent policy of
8 requiring its Non-Exempt Employees within the State of California, including Plaintiff, to work at
9 least five (5) and or ten (10) hours without a meal period and failing to pay or accurately pay such
10 employees one (1) hour of pay at the employees regular rate of compensation for each workday
11 that the meal period is not provided, as required by California state wage and hour laws.

12 11. On information and belief, during the statutory liability period and continuing to
13 the present (rest and meal period liability period), Defendants have had a consistent policy of
14 requiring its Non-Exempt Employees within the State of California, including Plaintiff, to work in
15 excess of four hours and or ten (10) hours without authorizing and permitting a rest period and
16 failing to pay or accurately pay such employees one (1) hour of pay at the employees regular rate
17 of compensation for each workday that the rest period is not authorized and permitted, as required
18 by California state wage and hour laws.

19 12. On information and belief, during the statutory liability period and continuing to
20 the present, Defendants have had a consistent policy of failing to timely pay wages upon
21 separation.

22 13. On information and belief, during the statutory liability period and continuing to
23 the present, Defendants have failed to provide Plaintiff and aggrieved employees accurate itemized
24 wage statements.

25 14. On information and belief, during the statutory liability period and continuing to
26 the present, Defendants have failed to maintain accurate records as Defendants failed to record
27 Plaintiff's and Aggrieved Employees' meal periods.
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15. Plaintiff on behalf of the general public as private attorney general and all other aggrieved employees bring this action pursuant to Labor Code 2698, et. seq. for violations enumerated under 2699.5 as follows: sections 201-203, 512, 558, 226, 266.3, 226.7, 266.3, 1174, 1174.5, 1175, 1194, 1197, 1197.1, 1198, and seeking penalties, interest, attorneys' fees and costs.

III. PARTIES

A. Plaintiff

16. Plaintiff, MATTHEW STROZIER, was at all times relevant to this action, a resident of California. Plaintiff was employed by Defendants in approximately December 2019 as a Non-Exempt Employee and worked during the liability period for Defendants as a Package Handler/Pre-loader, until his separation from Defendants' employ in approximately January 2020.

17. As Defendants' employee, Plaintiff, and all other aggrieved employees were regularly required to and subsequently suffered:

- a) perform work subject to the control of the employer without being compensated all wages including overtime, all in violation of California labor laws, regulations, and the Industrial Welfare Commission Wage Order ("IWC");
- b) work without being permitted or authorized a minimum ten-minute rest period for every four hours or major fraction thereof worked and not compensated one (1) hour of pay at his regular rate of compensation for each workday that a rest period was not provided, all in violation of California labor laws, regulations, and the Industrial Welfare Commission Wage Orders ("IWC");
- c) work in excess of six and ten hours per day without being provided meal periods and not compensated one (1) hour of pay at the regular rate of compensation for each workday that a meal period was not provided, all in violation of California labor laws, regulations, and the Industrial Welfare Commission Wage Orders ("IWC"); and
- d) not provided accurate itemized wage statements.

18. On information and belief, Defendants willfully failed to pay all earned wages in the form regular wages for reporting time, and meal and rest period premium wages, to its Non-

1 Exempt Employees and members of the Representative Group; nor have Defendants returned to
2 Plaintiff or members of the Representative Group, upon or after separation from employment
3 with Defendants, all wages earned and owing. Plaintiff seeks penalties under Labor Code 2698,
4 *et. seq.* on behalf of the general public as private attorney general and all other aggrieved
5 employees..

6 **B. Defendants**

7 19. Defendants UNITED PARCEL SERVICE INC., is a multination package delivery
8 and supply chain management company. Plaintiff estimates there are in excess of 100 Non-Exempt
9 Employees who work or have worked for Defendants over the last year.

10 20. Other than identified herein, Plaintiff is unaware of the true names, capacities,
11 relationships and extent of participation in the conduct alleged herein, of the defendants sued as
12 DOES 1 through 50, but is informed and believes and thereon alleges that said defendants are
13 legally responsible for the wrongful conduct alleged herein and therefore sues these defendants by
14 such fictitious names. Plaintiff will amend this complaint when their true names and capabilities
15 are ascertained.

16 21. Plaintiff is informed and believes and thereon alleges that each Defendant, directly
17 or indirectly, or through agents or other persons, employed Plaintiff and other members of the
18 Representative Group , and exercised control over their wages, hours, and working conditions.
19 Plaintiff is informed and believes and thereon alleges that each defendant acted in all respects
20 pertinent to this action as the agent of the other defendants, carried out a joint scheme, business
21 plan or policy in all respects pertinent hereto, and the acts of each defendant are legally attributable
22 to the other defendants.

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24 **IV. GENERAL ALLEGATIONS**

25 22. At all times set forth herein, Defendants employed Plaintiff and other persons in
26 the capacity of non-exempt positions, however titled, throughout the state of California.

27 23. Plaintiff is informed and believes Aggrieved Employees have at all times pertinent
28 hereto been Non-Exempt within the meaning of the California Labor Code and the implementing

1 rules and regulations of the IWC California Wage Orders.

2 24. Defendants continue to employ Non-Exempt Employees, however titled, in
3 California and implement a uniform set of policies and practices to all non-exempt employees, as
4 they were all engaged in the generic job duties of the package delivery process of Defendants'
5 business.

6 25. Plaintiff is informed and believes, and thereon alleges, that Defendants are and were
7 advised by skilled lawyers and other professionals, employees, and advisors with knowledge of
8 the requirements of California's wage and employment laws.

9 26. During the relevant time frame, Defendants compensated Plaintiff and Aggrieved
10 Employees based upon an hourly rate.

11 27. Plaintiff and the Aggrieved Employees were regularly required to work shifts in
12 excess of five hours without being provided a lawful meal period and over ten hours in a day
13 without being provided a second lawful meal period as required by law.

14 28. Indeed, during the relevant time, as a consequence of Defendants' staffing and
15 scheduling practices, lack of coverage, work demands, and Defendants' policies and practices,
16 Defendants frequently failed to provide Plaintiff and the Aggrieved Employees timely, legally
17 complaint uninterrupted 30-minute meal periods on shifts over five hours as required by law.

18 29. Similarly, as a consequence of Defendants' staffing and scheduling practices, lack
19 of coverage, work demands, and Defendants' policies and practices, Defendants frequently failed
20 to provide Plaintiff and the Aggrieved Employees legally compliant second meal periods on shifts
21 over ten hours as required by law.

22 30. On information and belief, Plaintiff and Aggrieved Employees did not waive their
23 rights to meal periods under the law.

24 31. Plaintiff and the Aggrieved Employees were not provided with valid lawful on-duty
25 meal periods.

26 32. Despite the above-mentioned meal period violations, Defendants failed to
27 compensate Plaintiff, and on information and belief, failed to compensate Aggrieved Employees,
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one additional hour of pay at their regular rate as required by California law when meal periods were not timely or lawfully provided in a compliant manner.

33. Plaintiff are informed and believe, and thereon alleges, that Defendants know, should know, knew, and/or should have known that Plaintiff and the other Aggrieved Employees were entitled to receive premium wages based on their regular rate of pay under Labor Code §226.7 but were not receiving such compensation.

34. In addition, during the relevant time frame, Plaintiff and the Non-Exempt Employees were systematically not authorized and permitted to take one net ten-minute paid, rest period for every four hours worked or major fraction thereof, which is a violation of the Labor Code and IWC wage order.

35. Defendants maintained and enforced scheduling practices, policies, and imposed work demands that frequently required Plaintiff and Aggrieved Employees to forego their lawful, paid rest periods of a net ten minutes for every four hours worked or major fraction thereof. Such requisite rest periods were not timely authorized and permitted as a result of Defendants' failure to provide relief for Plaintiff and Aggrieved Employees to take their lawfully required breaks.

36. Further, when Plaintiff and Aggrieved Employees were able to have a rest break, Defendants did not permit Plaintiff and Aggrieved Employees to leave the premises without authorization from Defendants' supervisors/managers.

37. Despite the above-mentioned rest period violations, Defendants did not compensate Plaintiff, and on information and belief, did not pay Aggrieved Employees one additional hour of pay at their regular rate as required by California law, including Labor Code section 226.7 and the applicable IWC wage order, for each day on which lawful rest periods were not authorized and permitted.

38. Defendants also failed to accurately compensate Plaintiff and Aggrieved Employees for on-call/reporting time pay for shifts that Plaintiff and Aggrieved Employees were told of only a day before the shift began.

39. Defendants also failed to provide accurate, lawful itemized wage statements to

1 Plaintiff and the Aggrieved Employees in part because of the above specified violations. In
2 addition, upon information and belief, Defendants omitted an accurate itemization of total hours
3 worked, including premiums due and owing for meal and rest period violations, gross pay and net
4 pay figures from Plaintiff and the Aggrieved Employees' wage statements and failed to correctly
5 identify Plaintiff's and Aggrieved Employees' overtime rates.

6 40. Plaintiff are informed and believe, and thereon alleges, that at all times herein
7 mentioned, Defendants knew that at the time of termination of employment (or within 72 hours
8 thereof for resignations without prior notice as the case may be) they had a duty to accurately
9 compensate Plaintiff and Aggrieved Employees for all wages owed including minimum wages,
10 meal and rest period premiums, and that Defendants had the financial ability to pay such
11 compensation, but willfully, knowingly, recklessly, and/or intentionally failed to do so in part
12 because of the above-specified violations.

13 41. Upon information and belief, Defendants failed to keep accurate records pursuant
14 to Labor Code § 1174.5 as Defendants failed to record Plaintiff's and Aggrieved Employees' meal
15 periods.

16 42. Upon information and belief, Defendants knew and or should have known that it is
17 improper to implement policies and commit unlawful acts such as:

18 (a) requiring employees to work four (4) hours or a major fraction thereof without
19 being provided a minimum ten (10) minute rest period and without compensating the employees
20 with one (1) hour of pay at the employees' regular rate of compensation for each workday that a
21 rest period was not provided;

22 (b) requiring employees to work in excess of five (5) hours or ten (10) hours per day
23 without being provided an uninterrupted thirty minute meal period and/or a second meal period,
24 and without compensating employees with one (1) hour of pay at the regular rate of compensation
25 for each workday that such a meal period was not provided;

26 (c) failure to pay for reporting time;

27 (d) failing to timely pay Plaintiff and Aggrieved Employees;

- 1 (e) failing to provide accurate itemized wage statements; and
2 (f) conducting and engaging in unfair business practices.

3 43. In addition to the violations above, and on information and belief, Defendants knew
4 they had a duty to compensate Plaintiff and Aggrieved Employees for the allegations asserted
5 herein and that Defendants had the financial ability to pay such compensation, but willfully,
6 knowingly, recklessly, and/or intentionally failed to do so.

7 **V. REPRESENTATIVE CLAIMS**

8 **THE PRIVATE ATTORNEYS GENERAL ACT- LABOR CODE §§ 2698 *et seq.***

9 44. Plaintiff incorporates by reference and re-alleges each and every allegation
10 contained above, as though fully set forth herein.

11 45. On January 6, 2021 Plaintiff complied with notice requirements pursuant to Labor
12 Code section 2699.3. A copy of the letter sent to the LWDA is attached hereto as **Exhibit A**,
13 indicating that the LWDA and Defendants were put on notice of the claims alleged here and that
14 the notice requirement has been satisfied. Sixty five days have passed and the LWDA has not
15 indicated intent to investigate the claims. Therefore, Plaintiff may proceed with this action in a
16 representative capacity. The substance and violations set forth in this Complaint of which the
17 LWDA was provided timely notice, Plaintiff has also sent a copy of this PAGA Representative
18 Action Complaint to the LWDA.

19 46. Plaintiff is an aggrieved employee as defined in Labor Code Section 2699(a).
20 Plaintiff brings this cause of action on behalf of all current and former California Non-Exempt
21 Employees of Defendants.

22 47. Pursuant to Labor Code section 2699(a) Plaintiff seek to recover civil penalties for
23 which Defendants are liable due to numerous Labor Code violations as set forth in this Complaint,
24 including without limitation Labor Code section 201-203, 226, 266.3, 226.7, 558, 512, 1174,
25 1174.5, 1175, 1194, 1197, 1197.1, and, 2698 *et seq.*, applicable IWC Wage Orders and California
26 Code of Regulations, Title 8, section 11000 *et seq.*

27 48. At all times relevant, Plaintiff and all other aggrieved employees regularly
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1 performed non-exempt work in excess of 50% of the time, and thus, were subject to the meal and
2 rest break requirements of the applicable IWC wage order and the Labor Code.

3 49. The IWC Wage Orders applicable to Plaintiff's and Aggrieved Employees'
4 employment provides that employees who are required to report to work and are furnished less
5 than half (1/2) their usual or scheduled days work must be paid for half (1/2) the usual or scheduled
6 day's work but not less than two (2) hours or more than (4) hours. The failure to compensate
7 employees for reporting time is a violation of the minimum wage obligations .

8 50. At all times relevant, Defendants failed to accurately compensate Plaintiff and
9 Aggrieved Employees for on-call/reporting time pay for shifts that Plaintiff and Class Members
10 were told of only a day before the shift began. As such, Plaintiff and Aggrieved Employees bring
11 this claim for minimum wage violations pertaining to reporting time for Plaintiff and the Class
12 pursuant to Labor Code section 1194.

13 51. Defendants violated Labor Code sections 512 and 226.7 for failing to provide
14 timely, uninterrupted first and second meal periods and requiring unlawful on duty meal periods,
15 or compensation in lieu thereof. Pursuant to Labor Code section 512, no employer shall employ
16 an employee for a work period of more than five (5) hours without providing a meal break of not
17 less than thirty (30) minutes in which the employee is relieved of all of his or her duties. An
18 employer may not employ an employee for a work period of more than ten (10) hours per day
19 without providing the employee with a second meal period of not less than thirty (30) minutes,
20 except that if the total hours worked is no more than twelve (12) hours, the second meal period
21 may be waived by mutual consent of the employer and the employee only if the first meal period
22 was not waived.

23 52. Defendants failed to provide Plaintiff and all other aggrieved employees
24 uninterrupted duty free meal periods of not less than thirty (30) minutes. Defendants implemented
25 and enforced policies of on duty meal period practices which required employees to work during
26 their meal periods, to forego their meal periods, and/or to return to work from meal periods prior
27 to thirty (30) uninterrupted minutes. As a proximate result of the aforementioned violations,
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1 Plaintiff and all other aggrieved employees have been damaged in an amount according to proof
2 at time of trial.

3 53. Plaintiff, and on information and belief, all aggrieved employees, were
4 systematically not permitted or authorized to take ten minute rest periods for every four hours
5 worked or major fraction thereof, which is a violation of the Labor Code and IWC wage order.
6 Plaintiff and on information and belief, aggrieved employees, were not compensated with one hour
7 of wages for every day in which a rest period was missed or untimely as a result of Defendants'
8 policies, practices, or work demands. By failing to authorize and permit a ten-minute rest period
9 for every four hours or major fraction thereof worked per day by its Non-Exempt Employees, and
10 by failing to provide compensation for such non-provided or shortened rest periods, as alleged
11 above, Defendants willfully violated the provisions of Labor Code sections 226.7, 512 and the
12 applicable IWC Wage Order.

13 54. Defendants also willfully violated Labor Code sections 201-203 by failing to
14 provide all owed wages at separation from employment. Labor Code sections 201 and 202 require
15 Defendants to pay their employees all wages due either at time of firing, or within seventy-two
16 (72) hours of voluntary separation, if not sooner. Section 203 of the Labor Code provides that if
17 an employer willfully fails to timely pay such wages the employer must, as a penalty, continue to
18 pay the subject employee's wages until the back wages are paid in full or an action is commenced.
19 The penalty cannot exceed 30 days of wages.
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21 55. Plaintiff and all other aggrieved employees who were separated from employment
22 are entitled to compensation for all forms of wages earned, including but not limited to
23 compensation regular and overtime wages, and for non-provided meal and rest periods, but to date
24 have not received such compensation, therefore entitling them to penalties under PAGA for
25 violations of Labor Code sections 201-203.

26 56. On information and belief, Defendants willfully failed to pay all wages due and
27 owing upon separation from employment. These wages include regular wages for reporting time,
28 and meal and rest period premiums.

57. On information and belief, Defendants failed to provide accurate itemized wage statements which failed to include all hours worked, and the overtime rates for Plaintiff and Aggrieved Employees. Defendants failed to provide an accurate accounting of, the lawful meal and rest period premiums due and owing to Plaintiff and the aggrieved employees, pursuant to Labor Code section 226(a).

58. Additionally, Defendants have no accurate records relating to aggrieved employees' meal periods and applicable pay rates, in violation of Wage Order. Similarly, Defendants failed to maintain accurate records relating to hours worked daily in violation of Labor Code sections 1174(d), 1174.5.

59. As a result of Defendants' unlawful conduct, Plaintiff and Aggrieved employees are entitled to penalties to the extent they were not paid at the prevailing wage rate for all hours worked.

60. Plaintiff and the Representative Aggrieved Employees are entitled to recover Penalties and attorneys' fees and costs sunder Labor Code section 2698, et. seq.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants, as follows:

1. For penalties according to proof, pursuant to Labor Code §§ 2698 et seq.;
2. For reasonable attorneys' fees and costs; and
3. For such other and further relief as the Court deems proper.

Dated: January 6, 2021

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